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**DETAINED**

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
FORT SNELLING, MINNESOTA**

In the Matter of:



In removal proceedings

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File No.: A



Immigration Judge TBD

Next Hearing: November 5, 2020; 9:00 AM

**RESPONDENT'S MOTION FOR BOND RETERMINATION HEARING BASED UPON  
CHANGED CIRCUMSTANCES**

October 23, 2020

[REDACTED]

**RESPONDENT'S MOTION FOR BOND RE-TERMINATION HEARING BASED UPON  
CHANGED CIRCUMSTANCES**

Pursuant to 8 CFR § 1003.19(e), Respondent, through undersigned counsel, respectfully requests a bond redetermination hearing based on a material change in circumstances and to be released from immigration detention on his own recognizance. In the alternative, Mr. [REDACTED] requests a bond of \$1,500. Mr. [REDACTED] has previously been denied bond by this Court when he was unrepresented. Since that bond hearing, Mr. [REDACTED]'s mental health has declined rapidly in immigration detention.

Mr. [REDACTED]'s sole arrest occurred in the midst of a mental health crisis. Due to subsequent mental health and chemical health evaluations by licensed professionals, Mr. [REDACTED] now has access to information and treatment options that were not previously available. He now takes medication which stabilizes his mood and thought processes, and he understands that further treatment is paramount to his continued stability. Because Mr. [REDACTED] has been able to address his mental health, he is unlikely to engage in the same behaviors that led to his June arrest, and he poses no danger to persons or property. Mr. [REDACTED]'s access to medication and treatment has also led to housing and community support that were previously unavailable to him due to his undiagnosed mental illness.

Because Mr. [REDACTED] has obtained evidence and treatment that was not previously available to him while he was *pro se* and that materially affects his eligibility for bond, he respectfully requests a new bond hearing.

**I. PROCEDURAL HISTORY AND RELEVANT FACTS**

Mr. [REDACTED] is a native of Colombia. *See* Notice to Appear (NTA) at 1. He entered the United States on [REDACTED] 2019. NTA at 1. Mr. [REDACTED] lived in Minneapolis with family friends until May of 2020. Tab F at 38. After Mr. [REDACTED] was the victim of an assault, his family friend, [REDACTED] asked him to leave. Tab F at 38, 40-43. Due to head injuries sustained during the assault, [REDACTED] personality changed, and she found him more difficult to live with. *Id.* From May to June, Mr. [REDACTED] was homeless. Tab C at 3; Tab F at 38.

Mr. [REDACTED] was arrested by the Minneapolis Parks Police on July 19, 2020, for assault in the 5<sup>th</sup> degree and possession of drug paraphernalia. Tab G at 50; I-213 at 3. Mr. [REDACTED] has been in the custody of Immigration and Customs Enforcement (ICE) since June 22, 2020. I-213 at 2. On July 13, 2020, Mr. [REDACTED] appeared before this Court *pro se* for an initial bond hearing. Tab B. At the initial bond hearing, the Immigration Judge denied Mr. [REDACTED] bond due to danger and flight risk. Tab B.

On July 13, 2020, Mr. [REDACTED] experienced an acute mental health crisis while detained in ICE custody at Kandiyohi County jail. *See* DHS Submission of Medical Records for Respondent and Motion for Competency Determination Pursuant to *Matter of M-A-M* [hereinafter *M-A-M* submission]. Mr. [REDACTED] engaged in self-injurious behavior, he appeared to have “scratches on arms and bleeding and showed CO that he had made several new “tattoos,” and experienced delusions stating “I only hear the voice of the Lord.” *Id.* at 8, 10. As a result of Mr. [REDACTED]’s mental health crisis, he was isolated in segregation for 30 days. *Id.* On July 31, 2020, the Department of Homeland Security (DHS) submitted Medical Records and a Motion for Competency Determination Pursuant to *Matter of M-A-M* on July 31, 2020. *See M-A-M* submission.

Following a competency hearing, Mr. [REDACTED] retained counsel. *See* EOIR-28 filed August 7, 2020. Dr. [REDACTED], PsyD, LP, completed an evaluation of Mr. [REDACTED] on October 13, 2020. Tab D. Dr. [REDACTED] diagnosed Mr. [REDACTED] with Bipolar I Disorder. Tab D at 11. Mr. [REDACTED] underwent a Rule 25 assessment on September 23, 2020, and has been accepted to a bilingual treatment program Tab L.

## II. MOTION FOR CUSTODY REDETERMINATION

Mr. [REDACTED] is eligible for a custody redetermination hearing based on changed circumstances. 8 CFR § 1003.19(e); *see also Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762, 768 (N.D. Cal. 2019) (finding a psychological evaluation and access to rehabilitation sufficient to constitute changed circumstances). Mr. [REDACTED] represented himself *pro se* at his previous redetermination hearing. Since that initial determination, this Court has found an indicia of incompetency. Mr. [REDACTED] has undergone two separate evaluations – a mental health evaluation and a chemical health evaluation. These evaluations enable Mr. [REDACTED] to enter treatment and programs which were previously unavailable to him. These evaluations and treatment options are probative with regards to both danger and flight risk. *See Lopez Reyes v. Bonnar* at 774. In light of these changed circumstances, INA § 236(a) permits this Court to release Mr. [REDACTED] from ICE custody pending a removal case on either conditional parole or a bond of \$1,500. Mr. [REDACTED] should not be detained, because he does not pose a danger to persons or property, to national security, and there is no risk that he will abscond.

“[T]he INA does not limit the discretionary factors that may be considered [for custody determinations],” *Matter of D-J-*, 23 I&N Dec. 572, 576 (2003). “An alien in a custody determination . . . must establish to the satisfaction of the Immigration Judge and this Board that

he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight.” *Matter of Guerra*, 24 I&N Dec. at 38. Other factors bearing on bond include:

“(1) whether the alien has a fixed address in the United States; (2) the alien’s length of residence in the United States; (3) the alien’s family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future; (4) the alien’s employment history; (5) the alien’s record of appearance in court; (6) the alien’s criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the alien’s history of immigration violations; (8) any attempts by the alien to flee prosecution or otherwise escape from authorities; and (9) the alien’s manner of entry to the United States.” *Matter of Guerra*, 24 I&N Dec. at 40 (internal citations omitted).

In analyzing and balancing these factors, “an Immigration Judge has broad discretion in deciding the factors that he or she may consider in custody redeterminations. The Immigration Judge may choose to give greater weight to one factor over others, as long as the decision is reasonable.” *Id.* at 40. Indeed, “any evidence in the record that is probative and specific can be considered.” *Id.* at 40.

**a. Mr. [REDACTED] Poses No Danger to the Community or a Risk to National Security.**

Mr. [REDACTED] limited contact with the police both in Colombia and in the United States demonstrate that he is neither a danger to the community nor a risk to national security. Mr. [REDACTED] was not known for violent behavior, nor has he had any interaction with the police while living in Colombia. Tab F at 32-37, Tab H. Mr. [REDACTED] has no criminal convictions in the United States and has only one arrest. *See*, I-213 at 2, Tab C, Tab G at 50. Mr. [REDACTED] was arrested by the Minneapolis Park Police on June 19, 2020. Tab G.

At the time of his arrest, Mr. [REDACTED] was homeless and living in a tent near in a public park Tab C, Tab D at 9. He was homeless following a severe head injury, which he



sustained when he was the victim of an assault approximately 3-4 months prior to his arrest. Tab C, Tab F at 38-44. Sudden changes to his personality and habits following the head injury included regular consumption of alcohol, failing to send money to his mother, and becoming generally less friendly and open. Tab F at 38. He has reported that by living in the streets, he could prove that they were “good” and that “God existed.” Tab D at 9. Mr. [REDACTED] was drinking beers with his friend Benjamin the morning of June 19 and does not remember any events afterward. Tab C at 3.

Benjamin reports that Mr. [REDACTED] drunk to the “point of passing out.” Tab D at 54. After spending the day together, Mr. [REDACTED] had become confused and accused him of stealing a wallet. Tab D at 54. Benjamin described Mr. [REDACTED] as “a confused kid (. . .) who barely speaks English” and stated that he would like him “get enough help as possible.” Tab D at 54. Mr. [REDACTED] was subsequently arrested and later released from police custody without being required to post a bond. Tab G at 49. He was immediately taken into custody by Immigration and Customs Enforcement. I-213.

Mr. [REDACTED] mental health crisis has grown in severity while in ICE custody. He has experienced multiple acute mental health episodes resulting in medical observation and periods of segregation lasting from 3 to 30 days. *See M-A-M* submission at 17 - 19; Tab I. Mr. [REDACTED] has struggled with and managed his mental health from a young age. Tab K. His most recent psychological evaluation indicates that he suffers from bipolar disorder, a condition which grows more acute with age. Tab D at 11.

While in ICE custody, Mr. [REDACTED] primary caregiver is a Licensed Marriage and Family Therapist. *See DHS Submission of Medical Records for Respondent and Motion for Competency Determination Pursuant to Matter of M-A-M* at 4-6. Mr. [REDACTED] has been

placed on psychotropic medications for the first time in his life. *Id.* at 20. Record do not indicate that he meets directly with a Nurse Practitioner or psychiatric professional. *Id.* Mr. [REDACTED] [REDACTED] now understands that his bipolar disorder and the head trauma he suffered in March, just months before his arrest, led him to use alcohol as a tool for self-medication. Tab C at 4. He underwent both a psychological evaluation and a drug and alcohol evaluation, and he is prepared to follow the recommendations from those reports. Tabs C-E, L, M.

For these reasons, Mr. [REDACTED] is not a danger to the community or a threat to national security. His singular interaction with the police occurred in the midst of a mental health crisis, and he is now able to recognize how alcohol use and his mental illness can negatively impact his life. As a result of this recognition, Mr. [REDACTED] understands the import of treatment to his stability and intends to follow through on the recommendations of the licensed mental health professionals who evaluated him while in ICE custody. This treatment intervention means that Mr. [REDACTED] is unlikely to engage in the behaviors that led to his arrest and is not dangerous.

**b. Mr. [REDACTED] Is Not a Flight Risk, Because He Has Support From Friends and Community Organizations.**

Mr. [REDACTED] has resided in Minneapolis following his arrival to the United States on a visitor visa. NTA at 1, Tab F at 38. He lived at the same address with [REDACTED] [REDACTED] until he was asked to leave following changes in his personality that occurred after he experienced head trauma. *Id.* Now with an understanding of his mental health struggles, Ms. [REDACTED] is willing to provide support to Mr. [REDACTED] once again and ensure he receives the treatment he needs. *Id.* The conclusions from his mental health and chemical health evaluations enable Mr. [REDACTED] to access services which will enable him to meet

directly with a psychiatrist, who will monitor his medication. Tab M. He will also be able to access bilingual treatment for alcohol use. Tab L.

Mr. [REDACTED] worked consistently in Colombia and the United States prior to experiencing head trauma. Tab A, Tab F at 38, Tab K. His community supports will provide him with housing and funds to continue attending therapy until he is able to work once again. Tab F at 38, Tab M. Mr. [REDACTED] expresses a desire to actively participate in the management of his mental health so he can fully participate in his removal case. Tab C; *see also, Matter of M-A-M-*, 25 I&N Dec.474, 479 (BIA 2011) (stating that in order to move forward, an incompetent Respondent must have the ability to consult with their representative). Mr. [REDACTED] has been in ICE custody for four months, and he has spent over 25% of that time in segregation. *See M-A-M* submission; Tab I. The negative impact of detention and the use of segregation, on his mental health is a factor compelling Mr. [REDACTED] to seek the appropriate treatment for his mental illness, which may only effectively occur outside of ICE detention. Tab C, Tab D at 12, Tab O.

**c. Other Factors Favor Mr. [REDACTED] Release.**

Covid-19 continues to pose a risk and is “unlikely to be controlled anywhere over the long term in this country.” Tab N at 87. More than 700 ICE detainees have tested positive and are placed in isolation to monitor the disease. Tab N at 88. Persons suffering acute mental illness are identified as at higher risk for two reasons: (1) isolation exacerbates risk of self-harm and suicide among this group<sup>1</sup> and (2) persons suffering an acute mental health crisis may not be able to meaningfully protect themselves from the virus. Tab N at 101, Tab O at 103. Mr. [REDACTED]

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<sup>1</sup> The increased risks associated with the detention of mentally ill persons in civil proceedings, as well as the interference with due process rights, has resulted in the burden being placed on the state in civil commitment proceedings. *Addington v. Texas*, 441 U.S. 418, 427 (1979).



██████████ is a member of groups identified in the *Frailhait* order for custody redetermination, because continued ICE custody puts both his health and others at risk.

**d. Mr. ██████████ Should be Released “On His Own Recognizance” Rather Than on Bond Because His Improper Detention Contributes to His Financial Distress and He Is Not a Flight Risk**

This Court has authority to release Mr. ██████████ “on his own recognizance” rather than on payment of bond. Under longstanding BIA precedent, “[a]n alien generally is not and should not be detained or required to post bond except on a finding that he is a threat to the national security, or that he is a poor bail risk.” *Matter of Patel*, 15 I. & N. Dec. 666, 666 (B.I.A. May 7, 1976). If Mr. ██████████ is not released on his own recognizance, alternatives to detention and monitoring should be considered.<sup>2</sup> Alternatively, he should be released on the minimum \$1,500 bond. As noted previously, the custody-redetermination factors favor his release.

**V. CONCLUSION**

For the foregoing reasons, Respondent requests that the Court hold a bond hearing and order that he be released on his own recognizance, after a bond hearing. In the alternative, Mr. ██████████ asks that the Court order that he be released on a \$1,500 bond.

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<sup>2</sup> “[T]he immigration judge must evaluate the alien’s ability to pay in setting bond above \$1,500 and must consider alternative conditions of release, such as GPS monitoring, that reasonably assure the safety of the community and the alien’s future appearances.: *Brito v. Barr*, 415 F. Supp. 3d 258, 271 (D. Mass. 2019).

Dated this 23rd day of October, 2020.

Respectfully submitted,

